

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOHN EDWARD BAKA
116 Portola Drive, Apt. 1
San Francisco, California 94131-1549

Certified Public Accountant
Certificate No. CPA 73539

Respondent.

Case No. AC-2006-13

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision herein.

This Decision shall become effective on October 20, 2006.

It is so ORDERED September 20, 2006.


FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSHUA A. ROOM, State Bar No. 214663
Deputy Attorney General
3 California Department of Justice
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-1299
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**
8 **CALIFORNIA BOARD OF ACCOUNTANCY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2006-13

12 JOHN EDWARD BAKA
116 Portola Drive, Apt. 1
San Francisco, California 94131-1549

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 Certified Public Accountant
14 Certificate No. CPA 73539

Respondent.

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16 In the interest of a prompt and speedy settlement of this matter, consistent with the
17 public interest and the responsibility of the California Board of Accountancy of the Department
18 of Consumer Affairs, the parties agree to the following Stipulated Settlement and Disciplinary
19 Order to be submitted to the Board for approval and adoption in disposition of the Accusation.

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21 PARTIES

22 1. Carol Sigmann (Complainant) is the Executive Officer of the California
23 Board of Accountancy. She brought this action solely in her official capacity and is represented
24 in this matter by Bill Lockyer, Attorney General of the State of California, by Joshua A. Room,
25 Deputy Attorney General.

26 2. Respondent John Edward Baka (Respondent) is represented in this
27 proceeding by attorney Karen L. Bae, whose address is Murphy, Pearson, Bradley & Feeney, A
28 Professional Corporation, 88 Kearny Street, 10th Floor, San Francisco, CA 94108.

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CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. AC-2006-13, if proven at a hearing, constitute cause for imposing discipline upon his Certified Public Accountant Certificate No. CPA 73539. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation. Respondent hereby gives up his right to contest those charges.

9. Respondent agrees that his Certified Public Accountant Certificate No. CPA 73539 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and/or the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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1 5. **Practice Investigation.** Respondent shall be subject to, and shall permit,
2 practice investigation of the Respondent's professional practice. Such a practice investigation
3 shall be conducted by representatives of the Board, provided notification of such review is
4 accomplished in a timely manner.

5 6. **Comply With Citations.** Respondent shall comply with all final orders
6 resulting from citations issued by the Board of Accountancy.

7 7. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
8 Respondent leaves California to reside or practice outside the state, Respondent must notify the
9 Board in writing of the dates of departure and return. Periods of non-California residency or
10 practice outside the state shall not apply to reduction of the probationary period, or of any
11 suspension. No obligation imposed herein, including requirements to file written reports,
12 reimburse Board costs, or make restitution to consumers, shall be suspended or otherwise
13 affected by periods of out-of-state residency or practice except at written direction of the Board.

14 8. **Continuing Education Courses.** Respondent shall complete and provide
15 proper proof to the Board of twenty-four (24) hours of continuing professional education (CPE)
16 courses in audit-related subjects, at least eight (8) hours of which shall include instruction on
17 audits of employee benefit plans. The professional education courses shall be completed within a
18 period of time designated and specified in writing by the Board or its designee, which time-frame
19 shall be incorporated as a condition of this probation. This required coursework shall be in
20 addition to continuing education requirements for relicensing. Failure to satisfactorily complete
21 the required courses as scheduled or failure to complete same no later than one hundred (100)
22 days prior to the termination of probation shall constitute a violation of probation.

23 9. **Cost Reimbursement.** Respondent shall reimburse the Board \$5,108.20
24 for its costs of investigation and prosecution. Full payment shall be made within thirty (30) days
25 of the date the Board's decision is final unless another payment plan is agreed to by the Board or
26 its representative in writing, in which case such plan shall be incorporated as a condition of this
27 probation. Any such plan must result in full payment within two (2) years of the effective date.

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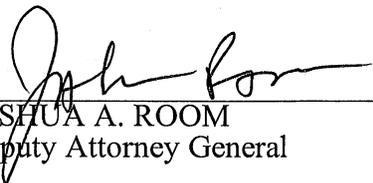
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: 7/14/06.

BILL LOCKYER, Attorney General
of the State of California



JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SF2006400686
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Exhibit A
Accusation No. AC-2006-13

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSHUA A. ROOM, State Bar No. 214663
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Case No. AC-2006-13

11 JOHN EDWARD BAKA
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12 San Francisco, California 94131-1549

A C C U S A T I O N

13 Certified Public Accountant
14 Certificate No. CPA 73539

Respondent.

16 Complainant alleges:

17 PARTIES

18 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the California Board of Accountancy of the Department of
20 Consumer Affairs.

21 2. On or about May 9, 1997, the California Board of Accountancy issued
22 Certified Public Accountant Certificate No. CPA 73539 to John Edward Baka (Respondent).
23 The Certificate was in full force and effect at all times relevant to the charges brought herein and
24 will expire on July 31, 2007, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the California Board of Accountancy
27 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 5100 of the Code provides, in pertinent part, that the Board may
2 suspend, revoke, refuse to renew, or censure any permit or certificate granted by the Board.

3 5. Section 118, subdivision (b), of the Code provides that the suspension,
4 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
5 proceed with disciplinary action during the period within which the license may be renewed,
6 restored, reissued or reinstated. Section 5070.6 of the Code provides that an expired permit may
7 be renewed at any time within five years after its expiration by application and payment of fees.

8 STATUTES, REGULATIONS, AND PROFESSIONAL STANDARDS

9 6. Section 5100 of the Code provides, in pertinent part, that the Board may
10 revoke, suspend, or refuse to renew any permit or certificate issued by the Board, or may censure
11 the holder of that permit or certificate, for “unprofessional conduct” including, but not limited to:

12 “(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
13 the same or different engagements, for the same or different clients, or any combination of
14 engagements or clients, each resulting in a violation of applicable professional standards that
15 indicate a lack of competency in the practice of public accountancy or in the performance of the
16 bookkeeping operations described in Section 5052.”

17 7. California Code of Regulations, title 16, section 58 (Board Rule 58),
18 provides that licensees engaged in the practice of public accountancy shall comply with all
19 applicable professional standards, including but not limited to generally accepted accounting
20 principles and generally accepted auditing standards.

21 8. Standards of practice pertinent herein include, without limitation:

22 a. Generally Accepted Auditing Standards (GAAS) discussed in the
23 Statements on Auditing Standards (SAS) issued by the American Institute of Certified Public
24 Accountants (AICPA). The SAS are codified, by “AU” number, in the AICPA *Codification of*
25 *Statements on Auditing Standards*. Those relevant herein include:

26 AU § 150 (Generally Accepted Auditing Standards);

27 AU § 311 (Audit Planning and Supervision);

28 AU § 319 (Consideration of Internal Control - Financial Statement Audit);

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AU § 336 (Using the Work of a Specialist);

AU § 339 (Working Papers);

AU § 560 (Subsequent Events).

b. Additional audit, accounting, and reporting standards contained in the Audit and Accounting Guide - Employee Benefit Plan (AAG-EBP) issued by the AICPA; the standards contained therein which are relevant herein include:

AAG-EBP § 7.59 (Auditing Procedures for Other Investments);

AAG-EBP § 10.04 (Auditing Participant Data, Allocations, Obligations);

AAG-EBP § 10.05 (Auditing Employer Participant Records);

AAG-EBP § 11.09 (Auditing Party-in-Interest Relationships).

9. Section 5107 of the Code provides, in pertinent part, that the Executive Officer of the Board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation of this chapter to pay to the Board reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.

BACKGROUND FACTS

10. For the six years ended March 31, 1997 to March 31, 2002, audits of the Independent Electric Supply Inc. Employee Stock Ownership Plan and Trust-Stock Bonus Plan (IES-ESOP) were conducted by the Accountancy Partnership of Fisher & Bagley (PAR 3086).

11. Respondent performed the IES-ESOP audit for the year ended March 31, 2002, under the supervision of engagement partner George Alan Fisher (CPA 50369).

CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Acts of Negligence)

12. Respondent is subject to disciplinary action under section 5100, subsection (c), of the Code, in that Respondent participated in and contributed to the Fisher & Bagley audit of the IES-ESOP for the year ended March 31, 2002, which audit was characterized by extreme departures from applicable professional standards constituting gross negligence and/or repeated acts of negligence. Among the departures from professional standards were the following:

1 a. The working papers prepared and maintained by Respondent and Fisher &
2 Bagley (collectively, "auditor") did not adequately document planning of the audit engagement.
3 Adequate documentation of the audit planning process ought to have shown: analytical review
4 procedures; understanding of the IES-ESOP entity's internal control structure; assessments of the
5 level of control risk; preliminary judgments about materiality levels. (AU §§ 150, 311, 339).

6 b. There was no documentation of the auditor's understanding of the internal
7 control structure of the IES-ESOP entity and the assessed level of control risk (AU §§ 150, 319).

8 c. The auditor relied on an appraiser to value the company stock owned by
9 the IES-ESOP entity, which stock was not traded on the open market, without documentation of
10 any reliable effort to evaluate the credentials of the appraiser. (AU § 336, AAG-EBP § 7.59).

11 d. The working papers do not provide documentation that the auditor tested
12 the participant data, including pay rates and plan contributions. (AAG-EBP §§ 10.04, 10.05).

13 e. The working papers do not provide documentation that the auditor tested
14 for Party in Interest relationships and Prohibited Transactions. (AAG-EBP § 11.09)

15 f. The working papers provide no evidence or documentation that the auditor
16 performed a search for unrecorded liabilities. (AU § 560).

17 g. The auditor signed off on audit programs to indicate performance of audit
18 tests, but most of the supporting schedules do not contain tick marks and/or explanations so as to
19 indicate that the audit steps were in fact performed. Moreover, the audit programs utilized by the
20 auditor were for nonprofit organizations and not employee benefit programs. (AU §§ 311, 339).

21 h. The auditor failed to exercise professional skepticism in the audit of the
22 IES-ESOP for the year ended March 31, 2002, by failing to properly: plan the audit; document
23 understanding of the internal control structure; or obtain evidentiary matter. (AU § 150).

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

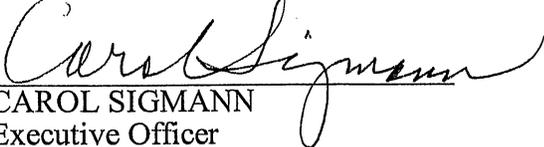
27 1. Revoking or suspending or otherwise imposing discipline upon Certified
28 Public Accountant Certificate No. CPA 73539, issued to John Edward Baka (Respondent);

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2. Ordering Respondent to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107; and

3. Taking such other and further action as is deemed necessary and proper.

DATED: May 3, 2006


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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